Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 86–191)

APPROVAL OF WILLIAM A. FINN TO GAUGE IMPORTED PETROLEUM AND PETROLEUM PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Approval.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), Mr. William A. Finn, 1908 Naomi Street, Glassport, Pennsylvania 15045, has applied to Customs for approval to gauge imported petroleum and petroleum products. It has been determined that Mr. Finn meets all of the requirements to be a Customs approved public gauger.

Accordingly, the application of William A. Finn to gauge imported petroleum and petroleum products in all Customs districts is approved.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Technical Services Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–2446).

Dated: October 14, 1986.

ROGER J. CRAIN,
Chief, Technical Section,
Technical Services Division.

[Published in the Federal Register, October 20, 1986 (51 FR 37250)]

19 CFR Part 111

(T.D. 86–192)

NOTICE OF DUE DATE OF CUSTOMS BROKERS' LISTS OF EMPLOYEES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Clarification of final rule and compliance date.

SUMMARY: This notice is to advise customs brokers when they must submit to each district director of Customs where the broker has a permit to transact customs business, the list of its employees. The notice also clarifies that brokers' employees who do not work directly in the brokerage portion of the business must be included on the list and that employees employed in several districts must be reported on the list of each district.

EFFECTIVE DATE: October 17, 1986.

FOR FURTHER INFORMATION CONTACT: Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch, (202–566–5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In T.D. 86–161, published in the Federal Register on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171, and 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984 (Pub. L. 98–573), relating to the regulation of customs brokers. Section 111.28(b), Customs Regulations (19 CFR 111.28(b)), was amended to state that each broker shall submit, in writing, to each district director where the broker has a permit to transact customs business, a list of names of persons currently employed in that district by the broker. For each such employee, the broker shall also provide the current home address, last prior home address, social security number, date and place of birth, and if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker.

Section 111.28(b) further provides that after an initial submission is made, the list shall be updated and submitted with the status report required by § 111.30(d), Customs Regulations (19 CFR 111.30(d)). However, no date was indicated in § 111.28(b) as the deadline for the initial submission. To give brokers ample time to prepare the list, Customs has now determined that initial submissions will not be required until January 31, 1987.

Regarding the employee lists, it is to be noted that the lists must include all employees who are employed by a broker in each dis-

trict. This means that even those employees who do not work in the brokerage portion of the business must be listed. Also, employees who are employed in several districts must be reported on the list of each district in which they work.

Dated: October 10, 1986.

JOHN P. SIMPSON,
Director, Office of
Regulations and Rulings.

[Published in the Federal Register, October 17, 1986 (51 FR 37002)]

U.S. Customs Service

Proposed Rulemakings

19 CFR Part 127

PROPOSED CUSTOMS REGULATIONS AMENDMENT RELATING TO SALE OF UNCLAIMED AND ABANDONED IMPORTED MERCHANDISE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow for the sale of unclaimed and abandoned merchandise in a district other than the district in which the merchandise was imported. It is expected that permitting sales in other districts would often result in higher bids for the merchandise at auction, and thus higher sales prices. Also, Customs would be able to consolidate the sales so that fewer Customs districts would be involved. This would allow for more efficient use of Customs personnel who organize and conduct such sales.

DATE: Comments must be received on or before December 16, 1986.

ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Cargo Enforcement Facilitation (202–566–8151).

SUPPLEMENTARY INFORMATION:

Background

Sections 490 through 493, Tariff Act of 1930, as amended (19 U.S.C. 1490–1493), set forth procedures to be followed whenever there has been an incomplete entry of imported merchandise, as well as procedures for the subsequent disposition of the merchandise. Whenever entry of any imported merchandise is not made within the time permitted by law or regulations, or whenever entry of such merchandise is incomplete because of the failure to pay the

estimated duties, or whenever, in Customs opinion, entry cannot be made for lack of proper documents or other cause, or whenever Customs believes that any merchandise is not correctly or legally invoiced, the merchandise is taken into Customs custody and sent to a bonded warehouse or public store. The merchandise, known as "general order", is held at the warehouse or public store at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.

If the general order merchandise remains in Customs custody for one year from the date of importation, without payment of all estimated duties and storage or other charges, it is then considered unclaimed and abandoned to the Government. The merchandise may then be appraised and sold by Customs at public auction. Gunpowder, explosives, or other merchandise subject to depreciation in value by damage, leakage, or other reasons, to such extent that the proceeds of the sale of the merchandise may be insufficient to pay the duties, storage, and other charges if it remains in a public store or a bonded warehouse for a period of one year, may be sold immediately.

Any merchandise which is subject to sale under these laws may be entered (but not for warehouse) or withdrawn for consumption at any time prior to sale, upon payment of all duties, storage, and other charges and expenses that may have accrued upon the merchandise. Also, there are separate provisions relating to the disposition of merchandise subject to internal revenue tax.

Sections 127.0 through 127.37, Customs Regulations (19 CFR 127–127.37), implement the laws concerning general order merchandise and the disposition of unclaimed and abandoned merchandise. Pursuant to § 127.22, relating to the place of sale of unclaimed and abandoned merchandise, the district director, in his discretion, may sell such merchandise at any port within his district.

It has come to Customs attention that unclaimed and abandoned merchandise could often be more advantageously sold if the sale were to occur in a district other than the one in which the merchandise was imported. This would allow Customs to consolidate the sales. Thus, fewer Customs districts would be involved, which would result in more efficient use of Customs personnel who organize and conduct such sales. It would also allow for more competition in the bidding (and therefore higher sales prices) since a greater number of prospective buyers would be present at these consolidated sales. In addition, certain merchandise, such as collector's quality firearms and rare birds, which appeal to specific kinds of buyers, would bring a higher price if they could be sold in a district with a concentration of these buyers. It is believed that the higher sales prices obtained in the consolidated sales would cover the costs of transportation of the merchandise to the district where the sale is to take place and still result in a greater return to the Government.

PROPOSED ACTION

It is proposed to amend § 127.22, Customs Regulations (19 CFR 127.22), to allow for the sale of unclaimed and abandoned merchandise in a district other than the one in which the merchandise was imported. The decision to transfer the merchandise for purposes of sale would be within the discretion of the district director in the district where the merchandise was imported. With the exception of certain merchandise as noted in 19 U.S.C. 1491 and 1492, only merchandise which has remained in general order for one year and is thereupon considered unclaimed and abandoned may be transferred to another district for sale.

The consignee of the merchandise would be notified of its transfer to another district for sale inasmuch as the consignee, pursuant to 19 U.S.C. 1491, has the option of making entry at any time prior to the sale, upon the payment of all duties, storage and other charges, and expenses that may have accrued on the merchandise. The costs of transfer would be assumed by Customs. They would be considered an expense of the sale, to be reimbursed to Customs out of the proceeds of the sale.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 522), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

DRAFTING INFORMATION

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 127

Customs duties and inspection, Unclaimed and abandoned merchandise.

PROPOSED AMENDMENT

It is proposed to amend Part 127, Customs Regulations (19 CFR Part 127), as set forth below.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The general authority citation of Part 127 is revised to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5733.

2. It is proposed to revise § 127.22 to read as follows:

§ 127.22 Place of sale.

All merchandise at a port other than a district headquarters port, which becomes subject to sale (including explosives, perishable articles and articles liable to depreciation), shall be promptly reported to the headquarters port for disposition. The district director at that port, in his discretion, may authorize the sale of such merchandise, as well as merchandise at the headquarters port which is subject to sale, at any port within his district, or in any other district. The consignee of any merchandise which is to be transferred from the district where it was imported to another district for sale, shall be notified of the transfer so that he may have the option of making entry for the merchandise before the transfer and sale.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 3, 1986.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, October 17, 1986 (51 FR 37043)]

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19 CFR Part 175

TARIFF CLASSIFICATION OF FIBER REINFORCED PLASTIC CELLULOSIC SAUSAGE CASINGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: A petition has been submitted on behalf of a domestic interested party regarding Customs rulings on the tariff classification of imported fiber reinforced plastic cellulosic sausage casings

composed of paper, regenerated cellulose and glycerin. The petitioner states that ruling letters which are the basis for the current classification of the product as sausage casings, not specially provided for, whether or not cut to length, other, erroneously reversed a prior interpretation of the TSUS. The petitioner claims these rulings were issued in disregard of a tariff provision which bars Customs from reversing or modifying a prior interpretation of the TSUS without the concurrence of the Attorney General or the Court of International Trade. The petitioner states that all cellulosic plastic sausage casings are to be classified as sausage casings, not specially provided for, whether or not cut to length, of cellulosic plastics material. This classification would subject the product to a higher rate of duty. The petition also challenges the current classification based on a determination of the product's component material of chief value. This document invites comments with respect to the correct classification of the product.

DATE: Comments must be received on or before December 15, 1986.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Jeremy N. Baskin, Classification and Value Division, (202–566–8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to decisions which are the basis for Customs current classification of fiber reinforced plastic cellulosic sausage casings under item 790.47, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), as sausage casings not specially provided for, whether or not cut to length, other. This classification would subject the product to a column one rate of duty of 4.4 percent ad valorem.

On January 12, 1984, Customs issued Ruling 073604 which reaffirmed conclusions reached in Ruling 061462 dated May 27, 1983. Ruling 061462 was issued in response to Request for Internal Advice No. 162/79. Ruling 061462 held that the subject fiber reinforced cellulose tubing was composed of paper, regenerated cellulose and glycerin and that the correct classification of the product was dependent on its component material of chief value. The ruling also stated at what point in the manufacturing process the chief value determination was to be made. Based on these rulings, Customs has classified the product under item 790.47, TSUS.

On September 30, 1985, a petition was submitted on behalf of a domestic interested party representing a company which manufactures and wholesales a product similar to that classified in Ruling

061462. The petitioner contends that the ruling is incorrect for several reasons. First, the ruling was issued in disregard of § 502(b), Tariff Act of 1930, as amended (19 U.S.C. 1502(b)), which bars Customs from revising or modifying a prior interpretation of the TSUS without the concurrence of the Attorney General or the Court of International Trade. By issuing the 1983 ruling, the petitioner states Customs reversed rulings made on October 31, 1975 (038749) and May 12, 1977 (051718) without seeking such concurrence. In Rulings 038749 and 051718, Customs held that fiber reinforced cellulosic plastic sausage casings were classifiable under item 790.45, TSUS, as sausage casings, not specifically provided for, whether or not cut to length, of cellulosic plastics material.

The petitioner states that the legislative history of the Tariff Schedules Technical Amendments Act of 1965 (Pub. L. 89–241, 79 Stat. 933, amending 19 U.S.C. 1202) reflects the intent of Congress that all cellulosic plastics sausage casings, whether fiber reinforced or not, are to be classified under item 790.45, TSUS, which provides for a column one duty rate of 7.3 percent ad valorem—a higher rate than is provided for in item 790.47, TSUS. The petitioner further avers that the legislative history of items 790.45 and 790.47, TSUS, dictates that item 790.47, TSUS, be restricted to casings made from natural animal products rather than fibrous cellulosic materials. The petitioner argues that the chief value standard is inapplicable to the classification of the subject casings and that the correct determination is dependent upon the casings' essential character.

Finally, the petitioner contends that if the operative standard of determining classification is component material of chief value, and the paper and glycerin ingredients of the subject casings are treated as discrete components for purposes of that chief value determination, the component material of chief value remains cellulosic plastics material. In the case of the paper, only the cost of the paper itself, not costs subsequently incurred in the production process, should be considered in measuring the value of the paper. Glycerin, a plasticizer, should be included in the value of the cellulosic plastics material.

COMMENTS

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on this issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

ALFRED R. DEANGELUS,
Acting Commissioner of Customs.

Approved: September 26, 1986.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, October 15, 1986 (51 FR 36703)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Edward D. Re

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Decisions of the United States Court of International Trade

(Slip Op. 86–99)

UNITED STATES, PLAINTIFF *v.* MECCA EXPORT CORP. AND INVESTORS INSURANCE CO. OF AMERICA, DEFENDANTS, AND INVESTORS INSURANCE CO. OF AMERICA, THIRD-PARTY PLAINTIFF *v.* MECCA EXPORT CORP., ET AL. THIRD-PARTY DEFENDANTS.

Court No. 85–5–00691

Before CARMAN, *Judge.*

MEMORANDUM OPINION

[Plaintiff's motion to sever, redesignate, and dismiss granted; third-party defendant's motion to dismiss denied.]

(Decided October 3, 1986)

Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division *(Kenneth N. Wolf,* for the plaintiff.

Milton Reiss, for defendant Investors Insurance Company of America and third-party plaintiff Investors Insurance Company of America.

Grunfeld, Desiderio, Lebowitz & Silverman (Michael P. Maxwell), for third-party defendants Brach, Green, Fried and Granada Electronics, Inc.

CARMAN, *Judge:* The question before the Court is whether the Court may continue to hear a cross-claim or third-party claim where the main action is terminated on non-jurisdictional grounds, even if the cross-claim or third-party claim does not satisfy the requirement of Federal subject matter jurisdiction. The Court holds that it may.

Plaintiff, United States, moves to sever and redesignate the lead portion of this action as Court No. 85–5–00691S, and to dismiss this redesignated portion. Third-party defendants Brach, Green, Fried and Granada Electronics, Inc. move to dismiss the third-party complaint against them. Third-party plaintiff, Investors Insurance Company of America (Investors) opposes both motions. There appears to be no motion seeking the dismissal of the cross claim by Investors against Mecca Export Corporation (Mecca), although third-party defendants indicate in their papers they believe there is no jurisdiction for the cross claim.

BACKGROUND

Plaintiff United States filed on May 21, 1985 its complaint alleging defendant Mecca failed to redeliver certain merchandise required and as a result was liable to pay $45,000 in liquidated damages arising from the breach of its entry bond. A second cause of action alleged defendant Investors was liable in a like amount as surety on defendant Mecca's bond. Defendant Investors, the surety, subsequently tendered to plaintiff United States all monies due in full satisfaction of plaintiff's claim.

Subsequent to the settlement of plaintiff's action, the surety defendant Investors filed a cross claim against its principal, defendant Mecca, and filed a third-party complaint against third-party defendants Brach, Green, Fried and Granada Electronics, Inc.

Plaintiff United States contends that since all of its claims have been satisfied in full and since it has no interest in the outcome of the third-party indemnity claim, it should be permitted to extricate itself from the action. Third-party defendants urge that the Court lacks jurisdiction over the claims against them since these claims were not filed until after the action had been rendered moot as a result of the settlement between plaintiff United States and the surety Investors. Further, third-party defendants contend that this Court lacks jurisdiction since the claims of the surety third-party plaintiff sound in contract on the surety bond and do not involve an international trade dispute.

DISCUSSION

Section 1583 of Title 28, United States Code provides:

> **§ 1583 Counterclaims, cross-claims and third-party actions.**
>
> In any civil action in the Court of International Trade, the Court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim, or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

28 U.S.C. § 1583 (1982).

The legislative history pertaining to the section makes clear that Congress believed the administration of justice would be well served if the Court of International Trade entertained jurisdiction over cross-claims and third party actions arising out of a suit by the United States to recover on a bond.[1] The Court's remedial powers

[1] The House Report stated:

> The terms of most customs bonds specify that the bond principal and the surety are jointly and severally liable to the United States. As introducted, H.R. 6394 did not permit the adjudication of the rights of all of the interested parties involved in an action arising under proposed sections 1582(a)(2) and 1582(a)(3). For example, if a surety desired to

Continued

were broadened, authorizing the entry of money judgments against the United States as well as any other party on a counterclaim, cross-claim or third-party action in civil actions relating to import transactions.[2] Generally cross-claims in Federal District Courts under Rule 13g (Rule 13f of this Court) of the Federal Rules of Civil Procedure do not require independent grounds of federal jurisdiction. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 617 n. 14 (1966).[3] Indeed the treatment of cross-claims as part of the ancillary jurisdiction of the Court existed prior to the Federal Rules. *See, e.g., Republic Nat. Bank & Trust Co.* v. *Massachusetts Bonding & Ins. Co.*, 68 F.2d 445, 447–48 (5th Cir. 1934).[4] In *Hoosier Cas. Co. of Indianapolis, Ind.* v. *Fox*, 102 F. Supp. 214, 226–27 (1952), and quoted at 6 C. Wright & A. Miller, *Federal Practice and Procedure* § 1433 at 179, the court said:

> [I]t is evident that any claim which arises out of the transaction or occurrence that is the subject matter of the main claim is regarded by the courts as being ancillary to the main claim and will be supported for federal jurisdictional purposes by federal jurisdiction of the main claim * * *. However the fact that cross claims are permissive in character does not prevent them from being ancillary to the main claim. If they "arise out of the transaction or occurrence that is the subject matter" of the main claim, they are supported for federal court jurisdictional purposes by federal jurisdiction of the main claim.

Hoosier Cas. Co., 102 F. Supp. at 226–27.

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[1] *Continued*

seek reimbursement from the bond principal for a breach of contract, the surety would have to bring a separate civil action in State court or Federal district court.

The sureties stated that the administration of justice would be served best if the Court of International Trade was permitted to entertain cross-claims between the bond principal and the surety when both were named defendants in a section 1582(a)(2) or (a)(3) action. They also recommended that the court be given jurisdiction over third-party actions arising out of suits by the United States to recover on a bond or to recover customs duties. The inclusion of third-party action jurisdiction will protect both the bond principal and the surety when either is not named as a defendant in an action brought by the United States for recovery on a customs bond. Under their recommendation the authorization for cross-claims and third-party actions would be included in proposed section 1583. The sureties strongly believed that these changes will allow the Court of International Trade to fully adjudicate the rights of all interested parties and to develop a uniform body of law, particularly with regard to liability on customs bond.

Since the hearings, members of the private bar have concurred in the recommendations made by the surety companies. Although there was no formal ABA position, * * * [the] Chairman of the ABA's Standing Committee on Customs Law stated that:

> Such a procedure would contribute to the effectiveness of the judicial process, since it would permit the Court of International Trade to dispose of all claims arising out of the same underlying transaction in the one proceeding which it must conduct in any event.

The Justice Department also saw the logic in the principle that when a surety is sued by the United States, the surety should be entitled to bring its principal into the suit.

In addition, several witnesses suggested it would be wholly consistent with the underlying purposes for establishing cross-claim and third-party procedures, as well as the expansion of the Government's right to counterclaim, to permit private litigants to assert a counterclaim.

Accordingly, the Subcommittee further amended proposed section 1583 to authorize the assertion of any counterclaim, cross-claim or third-party action of any party, if (1) such claim or action involves imported merchandise that is the subject of a civil action before the court, or (2) such claim or action is to recover on a bond or customs duties relating to such merchandise.

H.R. Rep. No. 96–1235, 96th Cong., 2d Sess. 37–38, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3729, 3748–49.

[2] As noted by the Honorable Peter W. Rodino:

> Previously, when the court rendered a decision in favor of an importer, the court returned the appropriate papers to the Customs Service with an order that the entry be reliquidated in accordance with the decision of the court. This had the effect of requiring a refund of customs duties to the importer.

Rodino, *The Customs Court Act of 1980*, 26 N.Y. L. Sch. L. Rev. 459, 467 n. 56 (1981).

[3] In *Consolo* an intervenor of right was permitted to interpose a cross-claim without independent jurisdictional grounds. In *Coleman* v. *Casey County Bd. of Educ.*, 686 F.2d 428 (1982), the district court's refusal to exercise jurisdiction over a local school board's cross-claim against a state board seeking indemnity and contribution for amounts expended in defense of a civil rights suit when adjudication would have necessitated resolution of complex questions of state law was held not to be an abuse of discretion. *Id.* at 430.

[4] In *Republic Nat. Bank*, a diversity action brought by a surety, the court held that dependent jurisdiction existed only because and insofar as necessary to fully exercise jurisdiction on the main claim.

Once ancillary jurisdiction over a third-party claim has attached, several cases have considered whether or not such jurisdiction continues after the main action has been settled. The weight of authority is the court does not lose jurisdiction over the third-party claim and may continue with it. *See* 3 *Moore's Federal Practice* ¶14.26, at 14–113 (1985) and cited cases. In *Dery* v. *Wyer,* 265 F.2d 804 (2d Cir. 1959), the Second Circuit pointed out:

> * * * a rule that ancillary jurisdiction of a third-party claim terminates on a determination of the main claim will seriously impair the utilization of the Rule, breed confusion and generate many sterile jurisdictional disputes.

Id. at 809.

It would appear nevertheless that where the main action has been dismissed for lack of jurisdiction, a third-party indemnity claim should also fall unless it can be supported by independent jurisdictional grounds. *Illinois Central Gulf Railroad Co.* v. *Pargas Inc.,* 706 F.2d 633 (5th Cir. 1983); *Ferreira* v. *Sawayama-Kisen KK,* 171 F. Supp. 96 (S.D.N.Y. 1959).

It is important that while ancillary or pendent jurisdiction exercised in Federal District Courts has been liberally construed to encourage the settlement of disputes in one action to avoid multiplicity and the splitting of causes of action, this Court has primary jurisdiction conferred upon it by 28 U.S.C. 1583. The same considerations enunciated by numerous Federal Courts supporting liberal exercise of ancillary jurisdiction in Federal District Courts apply with even greater force in this case. Congress conferred primary jurisdiction on this Court in customs bond cases to insure as much as possible that all claims relating to such action be disposed of in one proceeding. Just as with ancillary jurisdiction questions, this Court as a matter of sound judicial administration and to insure consistent results should, in considering § 1583, endeavor to avoid multiplicity of actions. If the Court were to accept plaintiff's arguments, the result would discourage the proper settlement of cases by sureties with the government. Furthermore, litigants should not be able to divest the Court of jurisdiction by deciding in one case to settle, while in another case to continue jurisdiction merely by not settling. Public policy favors the Court determining whether or not jurisdiction should be exercised.

Plaintiff's motion to sever, redesignate and dismiss is granted. Third-party defendant's motion to dismiss is denied.

So ordered.

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U.S. Customs Service

Treasury Decisions

U.S. Court of International Trade

*U.S. GOVERNMENT PRINTING OFFICE: 1986-181-118:40009